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**Subject:** Case Law Bulletin - Weeks of September 4 and September 11, 2017  
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**EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW**

**Case Law Bulletin**

Weeks of September 4, 2017  
and September 11, 2017

**Second Circuit**

[Mann v. Sessions](#), No. 16-1161, 2017 WL 3887983 (2d Cir. Sept. 7, 2017) (unpublished) (Asylum-PP)

The Second Circuit granted the PFR, concluding that the IJ erred in determining that petitioner's lack of personal physical harm was "dispositive of his past persecution claim," and remanded for the IJ to consider the "zone of risk" and "continuing hardship" tests articulated in *Tao Jiang v. Gonzales*, 500 F.3d 137, 141 (2d Cir. 2007).

**Third Circuit**

[Uddin v. Att'y Gen. of U.S.](#), No. 17-1056, 2017 WL 3881965 (3d Cir. Sept. 6, 2017) (Asylum-Terrorism Bar)

The Third Circuit granted the PFR in part, concluding that "Tier III [terror group] status cannot be assigned to a group" where, as here, there is no "finding regarding authorization [of the specified terrorist acts] by a group's leaders." Accordingly, the Third Circuit remanded for the Board to determine "whether the BNP's leadership has authorized its members to engage in the referenced terrorist activity."

[Mateo v. Att'y Gen. of United States](#), No. 15-1160, 2017 WL 3881943 (3d Cir. Sept. 6, 2017) (AggFel-COV:16(b) Void)

The Third Circuit granted the PFR, concluding that 18 U.S.C. § 16(b) is unconstitutionally "void for vagueness in immigration cases," and, in doing so, joined the Sixth, Ninth, and Eleventh Circuits. Since petitioner's removability was predicated on Pa. Const. Stat. § 3702 (robbery of a motor vehicle) constituting a crime of violence under § 16(b), the Third Circuit vacated the order of removal and remanded the case for further proceedings.

**Fifth Circuit**

[Diaz-Esparza v. Sessions](#), No. 16-60004, 2017 WL 3911789 (5th Cir. Sept. 6, 2017) (unpublished) (AggFel-COV:16(b) not void)

The Fifth Circuit denied the PFR, concluding that violation of Tex. Penal Code Ann. § 38.04 (evading arrest with a vehicle) was a crime of violence under 18 U.S.C. § 16(b) and that § 16(b) was not facially unconstitutional in the aggravated felony context, as it previously decided en banc in *United States v. Gonzalez-Longoria*, 831 F.3d 670, 677 (5th Cir. 2016).

[Tarango v. Sessions](#), No. 16-60017, 2017 WL 3887992 (5th Cir. Sept. 5, 2017) (unpublished) (MTR)

The Fifth Circuit denied the PFR, concluding that since petitioner's third motion to reopen exceeded the statutory right of one motion to reopen found in section 240(c)(7)(A) of the Act, it must be "construe[d] as a regulatory motion to reopen invoking the B[oard's] sua sponte power to reopen proceedings" over which the Fifth Circuit does not have jurisdiction. The Fifth Circuit also rejected petitioner's argument that *Mata v. Lynch*, 135 S. Ct. 2150 (2015), abolished all regulatory motions to reopen.

[Larvea v. Sessions](#), No. 15-60722, 2017 WL 4022345 (5th Cir. Sept. 12, 2017) (unpublished) (CIMT)

The Fifth Circuit granted the PFR and vacated the Board's decision, concluding that violation of Tex. Penal Code Ann. § 38.04 (evading arrest or detention) is a divisible statute and is not categorically a crime involving moral turpitude. The court also distinguished this case from *Garcia-Maldonado v. Gonzales*, 491 F.3d 284 (5th Cir. 2007) (holding that a conviction for failure to stop and render aid following a fatal car accident is a CIMT).

**Ninth Circuit**

[Sandoval-Lemus v. Sessions](#), No. 14-70378, 2017 WL 3978452 (9th Cir. Sept. 11, 2017) (unpublished) (PSC; Evidence)

The Ninth Circuit denied the PFR, concluding that the Board did not err in relying on a pre-plea report which summarized the police report from petitioner's arrest in determining that the particularly serious crime bar applied because "[t]he report was probative of the seriousness of Sandoval's conviction . . . [and] [i]ts admission was also fundamentally fair."

[Cornejo-Villagrana v. Sessions](#), No. 13-72185, 2017 WL 4051705 (9th Cir.

The Ninth Circuit denied the PFR, agreeing with the Board that petitioner is

Sept. 14, 2017) (Domestic Violence)

removable on the basis of his conviction in violation of Ariz. Rev. Stat. §§ 13-1203 and 13-3601 (misdemeanor domestic violence assault against spouse). After determining that Ariz. Rev. Stat. § 13-1203 is divisible and appropriate for a modified categorical analysis, the court concluded that Arizona's class one misdemeanor domestic violence assault is a crime of violence under 18 U.S.C. § 16(a), and with the additional element of a domestic relationship, a crime of domestic violence for purposes of section 237(a)(2)(E) of the Act.

#### Tenth Circuit

[Qiu v. Sessions](#), No. 16-9522, 2017 WL 3974512 (10th Cir. Sept. 11, 2017) (MTR-CCC)

The Tenth Circuit granted the PFR and remanded, concluding that the Board abused its discretion when it denied petitioner's MTR for changed country conditions, joining "the Second, Seventh, Ninth, and Eleventh Circuits [in concluding] that a significant increase in the level of persecution constitutes a material change in country conditions for purposes of section 240(c)(7)(C) of the Act."